

Minerals Management Service, Interior

§ 243.1

U.S.C. 1719 shall be subject to criminal penalties as provided at 30 U.S.C. 1720.

[49 FR 37352, Sept. 21, 1984]

§241.53 Assessments for nonperformance.

Administrative costs arising out of certain defaults or violations of orders requiring the performance of certain duties by lessees, as set forth in the regulations in this part, constitute loss or damage to the United States the amount of which is difficult or impracticable of ascertainment. Therefore, the following amounts shall be deemed to cover such loss or damage and shall be payable upon receipt of notice from the Associate Director of such loss or damage.

(a) For failure to comply with a written order or instructions of the Associate Director, \$250 if compliance is not obtained within the time specified.

(b) For failure to file sales contracts or division orders as required by lease terms, \$25 for each violation, and for failure to submit pipeline run tickets, or other proper evidence of disposal as required by these regulations, \$10 for each violation.

[47 FR 47775, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, further redesignated and amended at 53 FR 1226, Jan. 15, 1988]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

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PART 242—NOTICES AND ORDERS [RESERVED]

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AUTHORITY: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

Subpart A—General Provisions

§243.1 Procedure.

Except as may otherwise be provided in part 241 hereof, an order or decision issued under regulations administered by the Royalty Management Program may be appealed in accordance with the provisions of part 290 of this chapter.

[49 FR 37353, Sept. 21, 1984]

§ 243.2 Suspension of orders or decisions pending appeal.

(a) Compliance with any orders or decisions issued by the Royalty Management Program (RMP) of the Minerals Management Service (MMS), including orders for payments of royalty deficiencies (other than orders to pay additional royalties for the difference between a cents-per-ton royalty clause and an ad valorem royalty clause pursuant to the terms of coal leases following readjustment by the Bureau of Land Management (BLM)), rentals, interest, penalties (other than civil penalties provided for under section 109 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1719, and implemented in 30 CFR 241.51), royalty-in-kind contract payments, or other assessments, shall be suspended by reason of an appeal having been taken pursuant to 30 CFR part 290 unless the Director, MMS, notifies the appellant in writing that the decision or order shall not be suspended pending appeal. Unless the amount under appeal is \$1,000 or less, suspension of an order or decision requiring the payment of a specified amount of money shall be contingent upon the appellant's submission within a time period prescribed by MMS of an MMS-specified surety instrument deemed adequate to indemnify the lessor from loss or damage. Nothing in this paragraph shall be construed to prohibit an appellant from paying any demanded amount pending appeal. If the appeal is granted in whole or in part, the appellant will be entitled to a refund of the amount paid, without interest, in accordance with MMS refund procedures.

(b)(1) For purposes of this section, an "MMS-specified surety instrument" for fluids (oil, gas, and geothermal) leases means either: An MMS-specified administrative appeal bond; an MMS-specified irrevocable letter of credit; Treasury book-entry bond or note; or financial institution book-entry certificate of deposit. The "MMS-specified surety instrument" shall be in a form specified by MMS instructions or approved by MMS. A bond must be issued by a qualified surety company which has been approved by the Department of the Treasury. An irrevocable letter of credit or a certificate of deposit

must be from a financial institution acceptable to MMS with a minimum 1-year period of coverage subject to automatic renewal up to 5 years. The MMS will use a bankrating service to determine whether a financial institution has an acceptable rating to provide a surety instrument deemed adequate to indemnify the lessor from loss or damage. The MMS will accept only an "MMS-specified surety instrument" as qualified in this paragraph and in paragraph (c) of this section. The MMS will accept a single surety instrument that covers multiple amounts under appeal. The single surety instrument must be amended annually to either add new amounts or remove amounts that have been adjudicated. New amounts under appeal each year require a separate surety instrument until covered by the single surety instrument during the annual amendment.

(2) For purposes of this section, an "MMS-specified surety instrument" for other than fluids (oil, gas, and geothermal) leases, is the BLM lease surety instrument which must be increased at the request of MMS to cover royalty and interest obligations. However, if BLM has no lease surety instrument coverage, or the appellant chooses to provide a separate surety instrument to MMS, or the appellant is not the lessee of record, then an "MMS-specified surety instrument" in accordance with paragraph (b)(1) of this section is required.

(3) The "MMS-specified surety instrument" for RMP is subject to approval by a bond-approving officer. The designated bond-approving officer for RMP is the Associate Director for Royalty Management or delegated officials. The MMS will provide in writing to the appellant information and standard forms on "MMS-specified surety instrument" requirements.

(c)(1) The amount of the bond, letter of credit, Treasury book-entry bond or note, or financial institution book-entry certificate of deposit will be determined by MMS and will include the principal amount owed plus any accrued interest owed and projected interest for a 1-year period. In the case of Treasury book-entry bonds or notes, the amount must be equal to 120 percent of the required surety amount.

(2) If a decision on the appeal is not made within 1 year from the date the appeal is filed, appellants who submitted a bond shall amend the bond amount to cover additional estimated interest for another 1-year period. Appellants who submitted a letter of credit, a Treasury book-entry bond or note, or a financial institution book-entry certificate of deposit shall submit, at least 10 calendar days prior to the expiration date, a new surety instrument or an amendment to the existing surety instrument for an additional 1-year period of time with an increase in the amount to cover estimated interest for a 1-year period. In all cases, MMS will determine the additional estimated interest and amended surety instrument amount. If a surety instrument is not amended to include the additional interest coverage at least 10 calendar days prior to the expiration date of the surety instrument, MMS may make a demand against and collect from the surety. The collection against the surety will include the principal amount owed plus accrued interest.

(d)(1) An MMS decision or order that is appealed to the Interior Board of Land Appeals pursuant to 30 CFR part 290 and 43 CFR part 4, shall be suspended pending appeal if the appellant submits or maintains a surety instrument in accordance with the provisions of this section, unless the Director or the Deputy Commissioner of Indian Affairs (when Indian lands are involved) notifies the appellant in writing at the time the decision or order is issued that it will not be suspended pending appeal. The Director or the Deputy Commissioner of Indian Affairs may deny suspension of an appeal to avoid irreparable harm to the lessor.

(2) In any case where the Director of the Office of Hearings and Appeals or the Secretary takes jurisdiction of an administrative appeal involving a Royalty Management Program decision or order pursuant to 43 CFR part 4.5 and grants a suspension of effectiveness of the decision or order subject to the submission of an adequate surety instrument, the appellant must maintain that surety instrument in accordance with the requirements of this section.

(e) An Interior Board of Land Appeals decision, other final action of the De-

partment of the Interior regarding a Royalty Management Program decision or order, or a Royalty Management Program decision or order which is made effective pending appeal under paragraph (a), which is the subject of an action for judicial review in a United States District Court of competent jurisdiction will be suspended pending judicial review pursuant to 5 U.S.C. 705 if the plaintiff seeking review submits or maintains a surety instrument in accordance with the provisions of this section, unless the Government notifies the court that it will not agree to a suspension of the effectiveness of the decision or order pending judicial review.

(f) The MMS may initiate collection against a surety instrument if:

(1) The MMS Director decides an administrative appeal adversely to the appellant, and the appellant fails either to pay the disputed amount or pursue a further administrative appeal and maintain an adequate surety instrument pending such appeal;

(2) The Interior Board of Land Appeals, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides an administrative appeal adversely to the appellant, and the appellant fails either to pay the disputed amount or pursue judicial review and maintain an adequate surety instrument pending such judicial review, in accordance with paragraph (e);

(3) A court of competent jurisdiction issues a final nonappealable decision adverse to the appellant/plaintiff and the appellant/plaintiff fails to pay the disputed amount; or

(4) The appellant fails to increase the amount of the surety instrument as required under paragraph (c) or otherwise fails to maintain an adequate surety instrument in effect.

[57 FR 44997, Sept. 30, 1992]

§243.3 Exhaustion of administrative remedies.

In order to exhaust administrative remedies, a decision or order of MMS' Royalty Management Program must be appealed pursuant to 30 CFR part 290 to the Director (or the Deputy Commissioner of Indian Affairs when Indian lands are involved), and subsequently

to the Interior Board of Land Appeals under 30 CFR part 290.7 and 43 CFR part 4 unless the order has been made effective by the Director, or by the Assistant Secretary for Land and Minerals Management, or by the Assistant Secretary for Indian Affairs, or by the Interior Board of Land Appeals pursuant to 43 CFR part 4, as applicable.

[57 FR 44998, Sept. 30, 1992]

§ 243.4 Service of official correspondence.

(a) *Method of service.* Official correspondence issued by the Royalty Management Program (RMP) will be served by sending the document certified or registered mail, return receipt requested, to the addressee of record established in paragraph (b) of this section. Instead of certified or registered mail, RMP may deliver the document personally to the addressee of record and obtain a signature acknowledging the addressee's receipt of the document. Official correspondence includes all RMP orders that are appealable in accordance with the provisions of this part and 30 CFR part 290.

(b) *Addressee of record.* (1) The addressee of record for administrative correspondence for refiners participating in the government's Royalty-in-Kind (RIK) Program is the position title, department name and address, or individual name and address identified in the executed royalty oil sale contract. A different position title, department name and address, or individual name and address may be identified, in writing, by the refiner/purchaser for billing purposes. The refiner must notify the Minerals Management Service (MMS), in writing, of all addressee changes.

(2) The addressee of record for serving official correspondence on anyone required to report energy and mineral resources removed from Federal and Indian leases to the RMP Production Accounting and Auditing System is the most recent position title, department name and address, or individual name and address that RMP has in its records for the reporter/payor. The reporter/payor is responsible for notifying RMP, in writing, of any addressee changes.

(3) The addressee of record for serving official correspondence concerning onshore Federal leases is the current lessee of record with the Bureau of Land Management. For Indian leases, the addressee of record is the current lessee of record with the Bureau of Indian Affairs. For offshore leases, the addressee of record is the current lessee of record with the MMS Offshore Minerals Management Program. The lessee is responsible for notifying the appropriate Government office of any addressee changes.

(4) The addressee of record for serving official correspondence in connection with reviews and audits of payor records is the position title, department name and address, or individual name and address designated, in writing, by the company at the initiation of the audit, or the most recent addressee that was specified, in writing, by the payor.

(5) The addressee of record for serving official correspondence relating to reporting on the "Report of Sales and Royalty Remittance" (Form MMS-2014) is the most recent position title, department name and address, or individual name and address specified, in writing, by the payor. The payor is responsible for notifying the Royalty Management Program, in writing, of any addressee changes.

(6) The addressee of record for serving official correspondence in connection with remittances pertaining to rental and bonuses from nonproducing Federal leases is the most recent position title, department name and address, or individual name and address maintained in RMP records. The payor is responsible for notifying RMP, in writing, of any addressee changes.

(7) The addressee of record for serving official correspondence including orders, demands, invoices, or decisions, and other actions identified with payors reporting to the RMP Auditing and Financial System not identified above is the position title, department name and address or individual name and address for the payor identified on the most recent Payor Confirmation Report (Report No. ARR 290R) of a Payor Information Form (PIF) (Form MMS-4025 or Form MMS-4030) returned by RMP to the payor for the Federal or

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Indian lease (see 30 CFR 210.51 and 210.201).

(8) In the event official correspondence is applicable to more than one category identified in paragraphs (b) (1) through (7) of this section, MMS may serve the official correspondence in accordance with the requirements of any one paragraph.

(c) *Dates of service.* Except as provided in paragraph (d) of this section, official correspondence is considered served on the date that it is received at the address of record established in accordance with paragraph (b) of this section, as evidenced by a signed receipt of any person at that address. If official correspondence is served both personally and by registered or certified mail, the date of service is the earlier of the two dates, if they are different.

(d) *Constructive service.* (1) If delivery cannot be consummated after reasonable effort at the address of record established in accordance with paragraph (b) of this section, official correspondence will be deemed to have been constructively served 7 days after the date that the document is mailed.

(2) This provision covers such situations as nondelivery because the addressee has moved without filing a forwarding address, the forwarding order had expired, delivery was expressly refused, or the document was unclaimed where the attempt to deliver is substantiated by U.S. Postal Service authorities.

[56 FR 5949, Feb. 14, 1991; 56 FR 9251, Mar. 5, 1991; 58 FR 64903, Dec. 10, 1993]